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ILLEGITIMACY

By LADY COOK

(*née* Tennessee Claflin)

**9, Roland Gardens, London, S.W.,
England.**

ILLEGITIMACY.

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We are now prepared to give to the world the reasons why women have been working so indefatigably for the franchise. There are many laws which admittedly require to be greatly improved or altogether abolished. One of these is the law relating to bastardy, of which a striking illustration has been recently afforded by the Sackville Peerage case. There are many other laws which need alteration, and to these attention will be given in due course.

ILLEGITIMACY.

By LADY COOK (*née* Tennessee Claflin).

ALL authorities concur that no social subject is more difficult of right consideration than that of illegitimacy, and none more urgently in need of adjustment. Thirty years ago Mr. Acton, a distinguished member of the medical profession, read an important paper before the Statistical Society of London on illegitimacy in the parishes of St. Marylebone, St. Pancras, and St. George's, Southwark, in which he said:—"Social evils claim as urgently to be investigated and discussed as physical plague spots. Society has resolved upon abandoning the fictitious delicacy that was once a film before its eyes, and a lying curb upon its honest tongue, and no longer ignores them." Again he remarked:—"No social evil more constantly and unobtrusively presents itself before us than illegitimacy, yet, curiously enough, it has no literature." Stimulated by Mr. Acton's efforts, another and more exhaustive paper was read three years later by Mr. Lumley, then Assistant-Secretary of the Poor Law Board, in which he stated that he drew his facts from the unpublished returns of the Registrar-General. These two papers form the most considerable statistical contributions to the subject, and led the way to later returns.

A perusal of them shows us the extreme complexity of the subject. Unexpected and bizarre results continually crop up, although, on the whole, the percentages are, with slight variation, much the same from year to year for any given place. For instance, from 1841, when the first analysis of births was recorded in this country, to 1860, the proportion per cent. of illegitimate births to the gross number registered was never lower than 6.57 nor higher than 7, so that the fluctuation for nineteen years was never one-half per cent. Our pleasure in finding that London, compared with our other great towns, was the lowest in the

scale of percentage of illegitimate births to total births was modified when we discovered that a low illegitimate rate in English towns means a high rate of prostitution. Yet, strange to say, this rule does not apply on the Continent. Dr. Stark, Deputy-Registrar for Scotland, in his Report for 1856, says:—"The fact stares us in the face that in the Continental towns, where illegitimacy attains a dimension which it is to be hoped will never be witnessed in this country, the so-called social evil exists to an extent quite unknown in this country, and instead of tending to lower the proportion of illegitimate births, greatly increases it."

Compared with Continental capitals, the rate for London was again lowest—being for 1845 only 3.7; while the highest, Vienna, in 1851 was 51.7, or more than half the whole births. Lemberg, 1851, was 51; Prague, 46.7; Stockholm, 1831-5, 40.7; Milan, 1851, 34; Paris, 1858, 26.35; Madrid, 1859, 21.8; Turin, 1838, 18.91; Petersburg, 1828-9, 18.8; Berlin, 1840, 14.95. Such is the foul record of these great cities where prostitution marched *pari passu* with illegitimacy. Coming home again, we find it a delusion to suppose than an urban life is more inimical to chastity than a rural one, for in England illegitimacy is less in the towns than in the country. On the Continent, however, it is far otherwise. There illegitimacy greatly exceeds in the towns. Again, we find that those counties where the population is most sparse have the highest rate of illegitimacy. Thus density of population is favourable to a low rate. It might be thought that a high standard of education and prudence in marrying would invariably conduce to legitimacy. We find, however, that illegitimacy is far higher in Scotland than in England, although the former exceeds all other nations in education, and possibly in thrift. And in Cumberland, Westmoreland, Hereford, East and North Ridings of Yorkshire the standards of

education and prudence are relatively very high, so also is the rate of illegitimacy. Whereas in Monmouthshire, Cornwall, Lancashire, Staffordshire marriages are early, education is low, but illegitimacy is also low. In regard to Lancashire and other manufacturing districts, we are credibly informed that the male factory hand often delays marriage until he has proved the girl is fruitful. He desires children because they become profitably employed at an early age, so that the more he has the better off he is. Thus, too, a woman with several young illegitimate children is more sought after by some than one who has never borne, no matter how estimable her character. This is corroborated by the brothers Mayhew, who showed that in parts of the mining districts, as well as those named, it is considered "unthrifty to marry a woman who has not given evidence of fertility. She who cannot, at least, show fair prospect of adding young piecers, tenters, or hurriers, as well as her own person, to the common stock is no better than an unproductive encumbrance." "If thou houd'st I wed thee; if thou doesn't thou'rt none the waur," is a North-country proverb, familiar enough to many southerners, and acted upon to an immense extent. This practice must help to raise the rate.

In Cumberland the number of illegitimate to every 100 births in 1859 was 11.4; in Cornwall 5.8. On the other hand, London presents this remarkable discrepancy, that it is highest in education, very high in reference to prudence, but the lowest in the scale of illegitimacy. The number of illegitimate children registered in England and Wales was upwards of 43,000 annually. The total stillborn to those born alive is not known in this country, but records are kept in France, Belgium, and some other Continental States, and the presumption is that the ratio would be much higher here. M. Legoyt showed that in France

in 1857 the total births were 982,614, of which 41,905 were stillborn, being in the ratio of 4.26 to 100 births, but the illegitimate stillborn to the legitimate were 7.15 to 100. In Belgium the total stillborn was 4.9 to 100 born alive. The stillborn illegitimate to the illegitimate living was as 7 to 100. These numbers form approximate data for any calculations regarding stillborn elsewhere. Overcrowding, when sufficient to destroy the decencies of life, no doubt contributes very largely to illegitimacy, but we note that those towns and counties having the largest average number of residents per house have not the highest illegitimate rate.

The Registrar-General, in his fourteenth annual report, states: "The sex of the child is supposed to be influenced to a considerable extent by the relative ages of the parents, but the truth of this cannot be tested by the English returns." A singular fact, however, is shown, viz.:—That there is less disproportion between the sexes of the illegitimate than of the legitimate. Either because natural unions operate somehow more favourably in equalising the sexes or because—as a Prussian statist asserts—the fruit of a first pregnancy is oftener female than male. Dr. Stark states that "in Scotland the illegitimate births are almost solely confined to the labouring classes, the mothers consisting chiefly of women employed in farm or agricultural labour, of factory girls, domestic servants, and persons engaged in needlework." Mr. Acton tabulated the occupations of 339 mothers, of whom 194 were domestic servants and three were gentlewomen. So that domestics were responsible for more than half the illegitimacy in the three London parishes formerly named. In an analysis of the occupations of the fathers of 180 illegitimate children born in Marylebone Workhouse, male domestics figure highest, being twenty-five of the whole; labourers were twenty; unknown to mothers, thirteen; brick-

layers, tailors, and gentlemen, eight each; soldiers, seven; clerks, six; cabmen, five; and other occupations from one to four. Sad to say, forty-six of these 180 children died within a year of birth. Out of 388 illegitimate children that died in those three parishes in 1857, thirty-one did not survive a week and 326 died before they were one year old. Out of 877 illegitimate births, 392 died within a year. By Dr. Farr's table of Expectation of Life, out of every million born 149,154 die in the first year. The illegitimates help to swell this number, but if the ratio were the same as in the 877 births given 466,977 in each million would so perish. It is certain that the whole number of illegitimate deaths is never fully known.

The chances of life in the first year alone are at least four times greater for a legitimate than for an illegitimate child. Mr. Acton says: "No less than 846 babies are recorded officially as hanged, strangled, poisoned, suffocated, and so forth during the year 1856. The majority of these, we are justified in assuming, were the illegitimate offspring of first falls from virtue. Babies whose lives might have been saved by the hundreds, only no one cared about them. So they are gone with many others to witness against us—and their mothers are where?" Of 178 single women confined in one year in Marylebone Workhouse, the ages ranged from thirteen to forty-three. But 166 were between seventeen and thirty years of age—this being the period during which women are most attractive, and most readily yield to natural impulses. In 1888 the illegitimate births registered in England were 4.6 of the total births; from 1878 to 1887 they averaged 4.8; from 1841 to 1859 they ranged from 6.3 to 7 per cent. The rate, therefore, is steadily decreasing; but so is the legitimate rate. In Ireland, however, for 1888 the illegitimate rate was only 2.9 per cent. In educated and prosperous Ulster it was 4.4; in ignorant

and poverty-stricken Connaught 0.7. But then the marriage rate for Ireland was only 4.2 per 1000 of the population, against 14.1 in England; and in the same year 80 per cent. of the Irish emigrants were between fifteen and thirty-five years of age—the period most productive of illegitimacy as well as of marriage.

In submitting these statistics—and statistics are often a little tedious—we are well aware, without under-rating their great value, that for obvious reasons they can never reveal the whole truth. They do not give us the number of abortions, nor the stillborn, nor the concealed births, nor the secret child murders, that are never registered, so numerous are the facilities for undiscoverable crime. Dr. Wakely, the Coroner for West Middlesex, stated that if a woman be delivered over a pail of water and the child dropped into the water, no one can say whether or not the child has been wilfully destroyed. Again, concubinage is exceedingly prevalent in our great towns, especially in London, and the offspring are frequently described as legitimate. Neither do they give us the causes of the facts they set forth. Briefly summarised, the latter are as follows:—

1. Domestic servants are the mothers of more than half of our illegitimates born in workhouses.
2. Male domestics are the fathers of about one-fourth of the same.
3. The mothers are nearly all from seventeen to thirty years of age.
4. Early marriages lower the illegitimate rate and reduce or exterminate prostitution.
5. Prostitution also reduces the illegitimate.
6. Sparseness of population compares unfavourably with density.
7. High education co-exists with high rate.
8. Late marriages are accompanied by a high rate.

9. The rate, both for illegitimate and legitimate, is decreasing.

10. The deaths of illegitimate to legitimate in the first year are as four to one.

11. Illegitimacy causes an immense amount of known crime among the poor, and perhaps a yet greater amount of undetected crime among them and the wealthier classes.

To these we may add, that abortions are, as a rule, known only to medical men, midwives, and herbalists, and that stillborn—legitimate and illegitimate—are usually known only to undertakers, by whom they appear to be buried with as little ceremony as if they were kittens. Race appears to exercise a wholesome or deleterious influence, for the illegitimate birth-rate is always highest in the area of the Danish settlements, lowest in the South Saxon, and medium where the Britons existed longest.

The laws for the discouragement of illegitimacy are peculiarly harsh, and appear to have been made rather with a view to the preservation of clerical emoluments than to the reformation, or the amelioration, of the unfortunate and ignorant. It was in the Synod of Northumberland—shortly before that of Calcluith—held by a brace of Papal legates in 744, that the natural and civil rights of the illegitimates were attacked by two Articles:—"Art. XII. No illegitimate person shall be chosen Sovereign. Art. XVII. Bastards, especially those of nuns, are incapable of inheriting." We have it on the authority of the Venerable Bede that the nuns and monks of those days lived lives of open profligacy. The whole nation of Northumbria was debauched, and was, therefore, threatened by Pope Zachary with his excommunication. It was doubtless felt desirable that the property of wealthy nuns should not be lost to the Church by

any such common little accident as unwedded maternity. From that day to this the influence of the Church has been exercised to harry and ruin these unfortunates, and the spirit of her canons has extended to the civil laws. Thus a bastard can inherit nothing civilly, not even a surname; he is *filius nullius, filius populi.* Formerly he was incapable of holding holy orders or any other Church dignity. In Scotland he could not make a will until so late as the reign of William IV. His parish is that in which he was born, as in law he has no father. He may have been legitimated and made heritable in Scotland, or on the Continent, by the subsequent marriage of his parents—for in almost all Europe this merciful and wise law prevails—yet here, in England, he cannot inherit a foot of land. In such a case, the law of England holds that the succession to real property must be determined by the *lex loci rei sitæ.* The good sense of our ancestors desired that English law should coincide with Continental law in legitimising the offspring of those who married after their children had been born in concubinage. But this was rejected by the infamous Statute of Merton, passed in the 20th of Henry III. Notwithstanding, the law legitimised one sort of illegitimates freely, but then they must have been born in wedlock. If the marriage ceremony only immediately preceded the birth, it was sufficient. The law—so cruel to the unwedded mother—threw its powerful ægis over the infidelities of the wedded, but the latter have since been provided against. Lord Coke laid it down that "if the husband be within the four seas, and the wife hath issue, no proof shall be admitted to proved the child a bastard unless the husband hath an apparent impossibility of procreation." This incentive to adultery has since been removed; a husband now may plead non-access or any other proof, and the legitimacy of an unusually long

or short gestation must be decided by special medical testimony.

Parliament can legitimise a bastard, or, as we think, bastardise a legitimate. Queen Elizabeth, when Princess, underwent both processes. Her grandfather, Henry VII., was descended from an illegitimate son of John of Gaunt and his mistress, Catherine Swynford, whose numerous and adulterous issue were, after this marriage, legitimated by Parliament. Many other cases could be produced. Royal personages, our aristocracy and nobility, are sometimes loud in their condemnation of the shortcomings of the poor. We do not excuse their failings, but, at the same time, we feel that the highest should set the example to the lowest. Do they? Are not their numerous morganatic marriages alone a proof to the contrary? They do as the humbler citizens do, but call it by a grander title, and one "not understood of the people." And what a long list of illegitimates could we name among the higher classes! Heavily handicapped as they have been, the roll of the bastards has been a brilliant one. In peace and war, in Church and State, many have especially distinguished themselves. One filled the Papal throne and one the English. Where sons of celebrated men, they have often surpassed their fathers, and some have gloried in their ignominious title. There is, to-day, in the British Museum, a deed of grant by the Conqueror to his son-in-law of the lands of Edwin, which runs "*Ego Gulielmus Cognomine Bastardus, Rex Angliæ,* do," &c. Cardinal Beaufort, of towering, though malignant, genius, has been immortalised by our immortal Shakespeare. So, too, has Philip Faulconbridge, the son of Cœur de Lion. Monmouth was as superior to Charles II. as his cousin Berwick was superior to James II.

We may fairly assume, *cæteris paribus*, that no man is one whit the worse mentally or physically for being

a natural child. On the contrary, the evidence inclines to his having a large share of energy and ability. Nature stamps him, as it were, with her approval. Can nothing be done for the lives and fortunes of the fifty thousand natural children born annually in our country, half of whom are wrecked in their earliest youth, and for their unhappy mothers, who are driven to suicide or the streets through the selfish wickedness of their seducers and the cruel laws of the land? Can nothing be done to prevent the countless abortions and the numerous stillborn? Are we, who claim to be a humane and just people—a Christian people—to sit calmly with folded hands while these tens of thousands of innocents perish daily before our eyes, and thousands of pure maidens become the foul and loathsome creatures that infest our streets and contaminate our youth? Thirty thousand of these women in England are registered public prostitutes (but it is believed there are fifty thousand in London alone), flaunting themselves openly and shamelessly, to say nothing of all the private ones who ply their filthy trade in secret. Many of these are irreclaimable, abandoned beyond cure, being destitute of all womanly delicacy and goodness; but may they not be restrained? Easily, so we think, and with advantage to the community and to themselves. But then, say the statisticians, the illegitimate rate would immediately go up. But would not the law and public sentiment be ameliorated to meet that increase?

No legislation can suppress nature; all life rushes to reproduction; our procreative faculties are matured early, while passion is strong and judgment and self-restraint weak. We cannot alter this, but we can alter what is conventional. We can refuse to brand an act of nature as a crime, and to impute to vice what is due to ignorance. And we ask, Which is preferable—that our illegitimates increase, or that

30,000 public prostitutes should be in our midst, each a centre, spreading physical and moral poison among hundreds of thousands of the males of the present generation, who in their turn impart it to pure women and wives, thus contaminating with ineradicable disease the millions of the future? If we must undergo one of two evils, let us be wise enough to choose the lesser. Prostitution has no redeeming feature; it is a foul, and unmitigated, and unnatural evil. Illegitimacy, however, may, and does, exist with much that is pure and moral. In Scotland, for example, couples often live together and bring up families, and conduct themselves in all ways as decorously as if they had gone through the marriage ceremony. Except for their greater regard for each other, no one would suspect them of not being legally married. Many, too, of higher rank are restrained from marrying the women they love through fear of being disinherited; others, from disparity of birth. So they are driven to make concubines of those who should be wives, and who always retain their real affection, while the children, for whom they feel parental love, are counted with the illegitimates. Illegitimacy is immoral because morals are manners, and men make them.

Euripides, in his "Hecuba," causes the Queen to excuse herself for refusing to visit Polymnestor by saying, "It is indecent for a woman to look a man in the face." Giraldus Cambrensis states that formerly, in Wales, they hardly ever married without cohabiting beforehand; and Ulloa says that the natives of Peru disdain to marry unless their wives had previously enjoyed many lovers. When Iceland was largely depopulated by an epidemic in 1707, the King of Denmark caused a law to be made authorising young women in that island to have bastards without loss of their reputation. They were restricted to *six* children each. After a few years the population was normally

restored. Morals, then, may be anything and opposite. But nature is ever the same, and until human nature has reached a higher plane, and as long as young men and women can come together, so long will illegitimacy exist. But we demand that the law shall not lay the onus of the indiscretion wholly upon the mother; if the receiver of stolen goods is worse than the thief, the seducer is worse than the seduced. Although, as we believe, the woman occasionally seduces, it is more frequently the man, and as he is usually in her own rank, it must be by a profession of love, if not by a promise of marriage. Therefore, the responsibility of parentage and maintenance of the offspring should fall chiefly on him. At present his meanness and his cowardice protect him; maintenance has to be sued for in open court, and parentage proved publicly before he can be made responsible; whereas, if parentage were proved *in camera* after due notice given, many a girl who is now restrained by shame and destroys her child from poverty would give evidence of paternity, and many after-marriages would ensue when both had not been publicly disgraced.

Why should a girl, in order to secure natural justice, be obliged to proclaim her indiscretion and ignorance in public, and all for the miserable and insufficient pittance which the law awards her for her child? Her remedy is thus a greater injury to her than her seduction. And why should not the unmarried father, after proof of paternity, be as much constrained to properly support his child as the married one? The act of paternity is as voluntary in his case as in the other. While the young and inexperienced mother is weighed down with disgrace and care, the father goes wholly or almost scot-free; she becomes an outcast, but society receives him much as before; what is an indelible stain on her scarcely smirches his honour. Where is our boasted equity in such a case?

Is it any wonder that, betrayed, forsaken, disowned, maddened by her hopelessness and helplessness, she is irresistibly urged to criminality and death?

Parents are deeply to blame for a large portion of the miseries enumerated. If fathers encouraged their sons to be frank and trustful with them as they would be with their youthful friends, their experience and advice would prepare their children to beware of "the strange woman whose steps lead down to hell." Vice exposed and robbed of its mystery would disgust rather than charm; they would recognise the scientific truth of St. Paul's teaching that "our bodies are the temples of the living God" when preserved in purity. And if mothers would only learn to win the confidence of their daughters, and to teach them all they ought to know of themselves, thus guarding them from dangers and instructing them in the sacred duties and responsibilities of maternity, how many a girl would have been saved who is now lost through sheer ignorance, and from the foolish and misplaced modesty of the only one who could have properly enlightened her. We women are not permitted to legislate, but if we were we would sweep away the present laws relating to illegitimacy, and try to mete out equal justice to man and woman. We would leave a door open for rehabilitation by making marriage, at any time, legitimate the offspring. What has worked well for so long, and is working well still in Scotland, would work equally well here. Whilst safeguarding men against spurious charges, we would compel fathers to maintain their children and to compensate the mothers for pecuniary loss incurred through child-bearing. We would devise means to meet the worst cases: State foundling hospitals for those who would be rid of their little ones; hospitals governed on a new method, and which, so far from removing restraints like those of the Continent, should materially assist in increasing them.

For we would invest them with the power of recovery of cost of maintenance from the fathers, and thus remove the possibility of the mothers profiting in any way, while at the same time removing the temptations to infanticide. On the same principles we would have maternity hospitals, homes of real mercy, for those who felt the need of nursing, of care and reclamation. We have our workhouses and infirmaries for the physically weak or worn-out, the helpless and indigent; and asylums for physical monstrosities. We need houses, too, for lacerated minds, for the weak in spirit; homes which, like the angel of old, should stand between the living and the dead until the plague be stayed. Do we ask too much when we pray for a new legislative spirit—one that shall be free from every vicious taint of those old polemic laws which have enfeebled and oppressed us through the long centuries? If we thought so, we should despair of humanity. But we see visions and dream dreams: visions of the time when all will say with Tennyson:

> The woman's cause is man's; they rise or sink
> Together, dwarf'd or Godlike, bond or free;

dreams of the happy day when every mother shall be reverenced as the race preserver, and the life of every little one be guarded as a jewel of great price. Whatever our imperfections, it remains for us to

> Act and love, a closer link
> Betwixt us and the crowning race
> Of those that, eye to eye, shall look
> On Knowledge; under whose command
> Is Earth and Earth's, and in their hand
> Is nature like an open book;
> No longer half-akin to brute,
> For all we thought and loved and did,
> And hoped, and suffered, is but seed
> Of what in them is flower and fruit.

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